

SENATE BILL NO. 546

INTRODUCED BY J. ESP

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A COURT, UNDER CERTAIN CIRCUMSTANCES, TO COMMIT A PREGNANT PARENT WHO IS ABUSING CHEMICAL SUBSTANCES TO CHEMICAL DEPENDENCY TREATMENT, OR TO A CHEMICAL DEPENDENCY TREATMENT CENTER, IF ALL OF THE CHILDREN OF THAT PARENT HAVE BEEN ADJUDICATED AS BEING ABUSED OR NEGLECTED CHILDREN; AMENDING SECTIONS 41-3-422 AND 53-21-603, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Petition and order for commitment to chemical dependency treatment

or treatment center. (1) Upon a petition pursuant to 41-3-422, the court shall, after notice and hearing, order a pregnant parent committed to publicly provided chemical dependency treatment, to the Montana chemical dependency treatment center provided for in 53-21-603, or, if funding is available, to privately provided chemical dependency treatment or to a private chemical dependency treatment center with substantially equivalent inpatient services to the center provided for in 53-21-603, in accordance with this section.

(2) The court shall order the pregnant parent committed to treatment or to a treatment center if the court finds that:

- (a) the parent is pregnant;
- (b) all children residing with the parent at the time that the petition is heard have been:
 - (i) removed from the residence pursuant to this chapter;
 - (ii) placed in kinship or foster care, in a group home, with a noncustodial parent, in a protective facility, or in some other form of substitute care; and
 - (iii) adjudicated, pursuant to this chapter, to be youth in need of care;
- (c) the county attorney, the attorney general, or an attorney hired by the county has proved, by clear and convincing evidence and through the use of appropriate expert testimony, that the pregnant parent:
 - (i) suffers from substance abuse, as defined in 46-1-1103; or
 - (ii) has consumed, without a prescription and during the course of the pregnancy, a dangerous drug, as

1 defined in 50-32-101; and

2 (d) the pregnant parent is incapable or unwilling to voluntarily and meaningfully accept chemical
3 dependency treatment.

4 (3) An order for commitment pursuant to this section must include written findings of fact as to those
5 matters required to be found by subsection (2).

6 (4) An order for commitment pursuant to this section may require commitment to treatment or to a
7 treatment center for a period of time no longer than the period of the pregnancy. The order for commitment must
8 provide that at the end of the period of treatment, including any period of aftercare, as recommended by the
9 treatment provider or treatment center, and no later than the end of the pregnancy, the parent must be discharged
10 from treatment or from the treatment center.

11 (5) An order must require commitment as soon as space is available with the treatment provider or at
12 the treatment center. If commitment is ordered to a private treatment provider or a private treatment center, the
13 department may not be required to provide funding for the commitment.

14 (6) A pregnant parent for whom a petition has been filed, as provided in 41-3-422 and this section, has
15 a right to counsel, and if appropriate, to the services of the state public defender, as provided in 41-3-425.

16

17 **Section 2.** Section 41-3-422, MCA, is amended to read:

18 **"41-3-422. Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under this chapter
19 must be initiated by the filing of a petition. A petition may request the following relief:

20 (i) immediate protection and emergency protective services, as provided in 41-3-427;

21 (ii) temporary investigative authority, as provided in 41-3-433;

22 (iii) temporary legal custody, as provided in 41-3-442;

23 (iv) long-term custody, as provided in 41-3-445;

24 (v) termination of the parent-child legal relationship, as provided in 41-3-607;

25 (vi) appointment of a guardian pursuant to 41-3-444;

26 (vii) commitment to chemical dependency treatment or to a chemical dependency treatment center, as
27 provided in [section 1] and this section;

28 ~~(vii)~~(viii) a determination that preservation or reunification services need not be provided; or

29 ~~(viii)~~(ix) any combination of the provisions of subsections (1)(a)(i) through ~~(1)(a)(vii)~~ (1)(a)(viii) or any
30 other relief that may be required for the best interests of the child.

- 1 (b) The petition may be modified for different relief at any time within the discretion of the court.
- 2 (c) A petition for temporary legal custody may be the initial petition filed in a case.
- 3 (d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in
4 a case if a request for a determination that preservation or reunification services need not be provided is made
5 in the petition.
- 6 (2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under
7 this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be
8 accompanied by:
- 9 (a) an affidavit by the department alleging that the child appears to have been abused or neglected and
10 stating the basis for the petition; and
- 11 (b) a separate notice to the court stating any statutory time deadline for a hearing.
- 12 (3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.
- 13 (4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The
14 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.
15 Proceedings under a petition are not a bar to criminal prosecution.
- 16 (5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the
17 burden of presenting evidence required to justify the relief requested and establishing:
- 18 (i) probable cause for the issuance of an order for immediate protection and emergency protective
19 services or an order for temporary investigative authority;
- 20 (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;
- 21 (iii) a preponderance of the evidence for an order of long-term custody; or
- 22 (iv) clear and convincing evidence for an order requiring commitment of a pregnant parent to treatment
23 or to a chemical dependency treatment center, as provided in [section 1], or an order terminating the parent-child
24 legal relationship.
- 25 (b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child
26 Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child
27 Welfare Act apply.
- 28 (6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent,
29 guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state,
30 must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal

1 relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally,
2 the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

3 (b) Copies of all other petitions must be served upon the person or the person's attorney of record by
4 certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified
5 mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the
6 service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the
7 person to whom the notice was mailed appears at the hearing.

8 (7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency
9 having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as
10 provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of
11 justice require.

12 (8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and
13 if there is no guardian, the court shall appoint one.

14 (9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent,
15 preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of
16 all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard
17 does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the
18 child must be given notice of all reviews by the reviewing body.

19 (b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child
20 who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section
21 may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented
22 on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best
23 interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the
24 adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held
25 pursuant to this chapter involving the custody of the child.

26 (10) An abuse and neglect petition must:

27 (a) state the nature of the alleged abuse or neglect and of the relief requested;

28 (b) state the full name, age, and address of the child and the name and address of the child's parents
29 or guardian or person having legal custody of the child;

30 (c) state the names, addresses, and relationship to the child of all persons who are necessary parties

1 to the action.

2 (11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

3 (12) At any stage of the proceedings considered appropriate by the court, the court may order an
4 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute
5 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group
6 decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution
7 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department
8 is a party to the original proceeding, a representative of the department who has complete authority to settle the
9 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

10 (13) Service of a petition under this section must be accompanied by a written notice advising the child's
11 parent, guardian, or other person having physical or legal custody of the child of the:

12 (a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if
13 appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

14 (b) right to contest the allegations in the petition; and

15 (c) timelines for hearings and determinations required under this chapter.

16 (14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's
17 parent, guardian, or other person having physical or legal custody of the child that:

18 (a) the court is required by federal and state laws to hold a permanency hearing to determine the
19 permanent placement of a child no later than 12 months after a judge determines that the child has been abused
20 or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

21 (b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of
22 parental rights is in the best interests of the child and the state is required to file a petition to terminate parental
23 rights; and

24 (c) completion of a treatment plan does not guarantee the return of a child.

25 (15) A court may appoint a standing master to conduct hearings and propose decisions and orders to
26 the court for court consideration and action. A standing master may not conduct a proceeding to terminate
27 parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable
28 in the area of child abuse and neglect laws."

29

30 **Section 3.** Section 53-21-603, MCA, is amended to read:

